

would be expected to give the greatest return because it would have the greatest difference, and in those cases a majority of the bar did not respond to the poll.

Now, here you have a question of asking a majority of a minority of the bar its opinion of a sitting judge. It just does not seem to me from the point of view of effective techniques, of finding out what the lawyers in the jurisdictions think, a very useful method of determining even that, let alone basing a public judgment on the retention of a judge on what the bar thinks of him or allegedly thinks as represented through a poll where the only answer can be yes or no. I have the greatest reservations about including this in the constitution, and even greater reservations about its adequacy as a public policy.

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Macdonald. Delegate Willoner had the floor first, if you would yield. Never mind. He yielded. Delegate Macdonald, you may proceed.

DELEGATE MACDONALD: I rise to oppose the motion to reconsider.

We voted on this matter, not once, but twice, in connection with Amendments Nos. 43 and 45. Both times we voted down.

Now, the advocates of this motion to reconsider are suggesting to you that you deprive the public, the voters, of the advisory opinion of the lawyers. Perhaps the lawyers will be smart in this matter and cast a ballot which is near perfect, and maybe they will not be. I think the first group to know that they are not perfect in casting this ballot will be the public. But I think that the public is entitled to know what the opinion of the lawyers is in regard to their judges. It is advisory only, and I think it should be held, and for that reason, I would oppose the motion to reconsider.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the motion? Delegate Mitchell.

DELEGATE MITCHELL: Mr. President, I rise to speak in favor of the motion to reconsider because I think that this provision has no place in the constitution. It is statutory or regulatory in nature, and therefore should be left to either the rule-making powers of the judiciary or the legislature to prescribe.

Further, I think it is inconsistent with the very purpose of this article of judicial

reform. If the purpose is to provide in Maryland a high quality, free and independent judiciary, then I think such a provision as is provided in this article for an election, at least a vote by secret ballot of the lawyers, is demeaning, it casts aspersions on the ability of the people themselves to select competent judicial leaders.

I am very much concerned that this kind of provision embodies in it, especially the provision of secret ballot, of the kind of suspicion and distrust which I think has no place in a constitution, much less a democratic system of government; and I therefore recommend the reconsideration of this section.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the motion to reconsider? Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman, I just have a question of Delegate Bamberger, if it is in order and if he will yield.

THE CHAIRMAN: Does Delegate Bamberger yield to a question?

DELEGATE BAMBERGER: I yield.

THE CHAIRMAN: Delegate Johnson.

DELEGATE JOHNSON: Mr. Chairman and Delegate Bamberger, I just want to make certain that I understand the meaning of your remarks.

Do you mean to say that in your opinion lawyers are not qualified to pass upon the qualifications of a sitting judge, but by virtue of this service on a nominating commission are qualified to pass upon the potential qualifications of a potential judge?

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: I believe that a nominating commission made up of three lawyers and counterbalanced by three laymen is competent to recommend a number of people to an executive for his review and consideration of an appointment. I do not believe that lawyers are so well qualified that the constitution should prescribe for his life that there shall be an election conducted as a constitutional election under the auspices of the clerk of the Court of Appeals of Maryland, which I think will have more persuasion with the electorate than it is entitled to have.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the motion to reconsider? Delegate Scanlan, do you desire to speak in favor of the motion to reconsider?